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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 631,638	08 02 2000	Kevin M. Moore	1533 0980001 SRL PAJ	8662

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STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W., SUITE 600
WASHINGTON, DC 20005-3934

EXAMINER

NAFF, DAVID M

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 12 23 2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

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1533.0980001/52/k

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Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☒ is extended to run _____ or continues to run 3 months from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 11/25/02 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:
- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. ☐ They raise new issues that would require further consideration and/or search. (See Note).
- c. ☐ They raise the issue of new matter. (See Note).
- d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

- 2 ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing of an appeal, the proposed amendment ☒ will be entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: None
Claims objected to: _____
Claims rejected: 1-7 + 9-31

However,

- Applicant's response has overcome the following rejection(s): 35 USC 112, first and second
paragraph rejections
- 4 ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because See
attachment
- 5 ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 10657

ATTACHMENT OT FORM PTOL-303

The rejection of claims 1-7 and 9-31 under 35 U.S.C. 103(a) as being unpatentable over Dumpelmann et al (5,852,211) in view of Bott et al (0 174 624) is maintained.

5 Applicants urge that Dumpelmann et al does not disclose drying the fermentation broth and reaction of the dried product with a lower alcohol and acid as claimed. However, when Bott et al is consider, it would have been obvious to omit crystallizing of NaKGA in the broth of Dumpelmann et al, and simply dry the broth and mix the dried broth with the lower
10 alcohol and acid to simplify.

Applicants refer to col 3, lines 26-31, of Dumpelmann et al as disclosing that crystallization or drying of KGA should be avoided. However, this relates to drying KGA isolated from a fermentation broth by crystallizing, not to drying of a fermentation containing KGA as
15 suggested Bott et al.

It is recognized as urged by applicants that Bott et al does not remove insolubles after reacting the organic acid-containing product with alcohol in the presence of an acid. However, Bott et al does not remove insolubles because insolubles are not formed. When insolubles are formed
20 as disclosed by Dumpelmann et al, it would have been obvious to remove the insolubles as disclosed by Dumpelmann et al.

Contrary to applicants' argument, the teachings of Dumpelmann et al of not crystallization or drying of KGA as in the prior art do not contradict the teachings of Bott et al since Bott et al is not
25 crystallizing or drying crystallized KGA, but instead is drying a

fermentation broth containing an organic acid, and then reacting the dried broth with a lower alcohol and acid. There is seen no convincing reason why the steps of Bott et al cannot be used when the organic acid is KGA. Drying a fermentation broth containing KGA is not drying KGA
5 isolated from a broth which Dumpelmann et al indicate is disadvantageous.

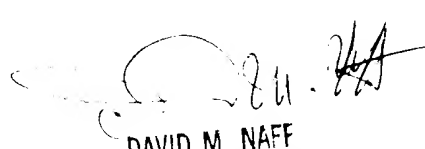
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is (703) 308-0520. The examiner can normally be reached on Monday-Thursday and every other Friday from about 8:30 AM to about 6:00
10 PM.

If attempts to reach the examiner by telephone are unsuccessful, a message can be left on voice mail.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached at telephone number
15 (703) 308-4743.

The fax phone number is (703) 872-9306 before final rejection or (703) 872-9307 after final rejection.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist
20 whose telephone number is (703) 308-0196.


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651